

**GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES
ELECTION SYSTEM OF THE VIRGIN ISLANDS
RULES AND REGULATIONS**

**PROCEDURES FOR THE UNIFORMED NON-DISCRIMINTORY
ADMINISTRATIVE COMPLAINT PROCEDURES**

TITLE 18 SECTION 47(5) 1.1 PURPOSE AND AUTHORITY

Pursuant to P.L. 107-252 "Help America Vote Act 2002 section (254 & 402) and Title 18 section 47 subsection 5, the Election System of the Virgin Islands, establishes the following procedures for the conducting of the Joint Boards of Elections responsibilities in the administration and enforcement of Title 18, Chapter 3 Virgin Islands Code.

SECTION 47-2 NON-DISCRIMINATION POLICY STATEMENT

The voting population of the Virgin Islands is a community of people with respect for diversity. The Election System of the Virgin Islands emphasizes the dignity and equality common to all persons and adheres to a strict nondiscrimination policy regarding the treatment of individuals. In accord with federal law and applicable Virgin Islands statutes, the Election System of the Virgin Islands does not discriminate on the basis of race, color, religion, sex, national origin, ancestry, age, disability, or veteran status in employment or in any program or activity offered by the agency. The Election System of the Virgin Islands maintains a administrative complaint procedure incorporating full due process and an appeal process to any person who believes there is a violation of any provision of Title III, this includes a violation which has occurred, is occurring, or is about to occur.

SECTION 47- 3 FILING

(A) Filing of papers;

1. Any complaint filed under these procedures shall be in writing and notarized, and signed and sworn by the person filing the complaint. Supporting documentation may accompany the complaint.
2. The Territory may consolidate complaints filed under section 47-3(1)
3. At the request of the complainant, there shall be a hearing on the record, this request shall be made at the time of filing of papers.

SECTION 47- 4 METHODS OF RESOLUTION AND PROCEDURES

(A) INFORMAL HEARING PROCEDURE;

1. The informal hearing is intended to affect a resolution of the matter by reconciling the parties' differences and/or rectifying the alleged action(s). If, after preliminary review of the matter, it is the judgment of the Supervisor of Elections that the Office of the Supervisor of Elections should not address the case, the informal procedure shall be terminated and the Supervisor of Elections shall advise the complainant of other available procedures that are available to them.
2. If the Supervisor of Elections finds that the Office of the Supervisor of Elections should address the complaint, the Supervisor of Elections will initiate the informal complaint procedure. The Supervisor of Elections may communicate directly with the respondent specifically outlining the alleged infractions and attempt to resolve the matter. If this resolves the complaint, no other person will be contacted. The Supervisor of Elections may also meet both parties, make inquiries to ascertain pertinent fact, and consult with others to facilitate the process. If, under this procedure, it is determined that there is a violation of any provision of Title III, an appropriate remedy shall be instituted. If, under this procedure, it is determined that there is no violation of any provision of Title III, the complaint shall be dismissed and the results of the procedures shall be published. If this option does not resolve the matter, all other options remain open to the complainant.

(B) FORMAL HEARING PROCEDURES;

1. The formal hearing procedure described below are established for those issues which remain unresolved after informal hearing has occurred, or in which the Supervisor of Election determines the alleged action is egregious to such a degree that a formal hearing is necessary.

(a) WRITTEN COMPLAINT

Any complaint filed under these procedures shall be in writing and notarized, and signed and sworn by the person filing the complaint. Supporting documentation may accompany the complaint. The complaint must contain s detailed description of the action being complained about, the name of the alleged offender(s). Further, the complaint must confirm the veracity of the allegations.

(b) NOTIFICATION

Within ten (10) business days of the receipt of a signed complaint, the Supervisor of Elections will notify the respondent of the complaint. In providing notice to the parties, the Supervisor of Elections will identify the pertinent policies and procedures involved and will explain the investigative process and the rights and responsibilities of all parties. Notice will be delivered by hand or certified mail. A copy of the written complaint or statement will also be provided to the respondent. The respondent will be provided an opportunity to make a formal statement in rebuttal. The respondent has ten (10) business days after receipt of the complaint in which to respond to the allegations in the complaint in writing and submit the reply to the Supervisor of Elections.

Within ten (10) business days of the receipt of the reply, the Supervisor of Elections shall discuss the reply with the complainant, and ask both the complainant and respondent if they will enter into mediation to resolve the complaint. If so, the Supervisor of Elections will initiate the mediation process within fifteen (15) business days of receiving the reply.

(c) INVESTIGATION

If the complaint is unresolved, or if either party refuses to the Supervisor of Elections, or a qualified designee, will act as investigator. If the respondent elects not to participate in the formal resolution process, the case may be investigated without the respondent's involvement.

If, during the investigation, the complainant indicates a desire to withdraw the complaint, the case will be closed and the complainant will not be permitted to re-file the complaint, absent extraordinary circumstances. However, in cases where the investigation discloses a clear violation of Election System of the V.I. policy and/or territorial or federal statutory mandates, the Supervisor of Elections office will take action to address those violations regardless of the complainant's wishes. The Supervisor of Elections, or qualified designee, is authorized to contact any and all personnel and other individuals (e.g. individual, voter, candidates, agents, subcontractors, volunteers, or guests) who may have information relevant to the complaint. The Supervisor of Elections, or qualified designee, will have access to all relevant records. The investigator will maintain a written record of interviews and investigation. The Office of Supervisor of Elections retains this document as a permanent confidential record.

At the discretion of the District Chairman, the District Board of Elections may review (by hearing, if so requested) the circumstances of the case and provide the Supervisor of Elections with recommendations. The District Board of Elections shall determine hearing procedures and the constitution of the hearing committee.

The hearing procedures will be formal, and the purpose will be to permit both the complainant and respondent an opportunity to present their case.

(d) REPORT OF FINDINGS

Based on the findings of the investigation, the Supervisor of Elections shall prepare a report of findings which shall include: a description of the alleged acts, a summary of the evidence collected, an evaluation of the pertinent evidence, and a finding of probable cause or no probable cause as to whether the conduct constitutes a violation of the Election System of the Virgin Islands policies and procedures. If, under this procedure, the territory determines that there is a violation of any provision of title III, the territory shall provide the appropriate remedy. If, under this procedure, the territory determines that there is no violation the territory shall dismiss the complaint and publish the results of the procedure. Potential violations of the system's policies and procedures, which are discovered during the investigation but which are outside the jurisdiction of the Office of Supervisor of Elections, will be referred to the appropriate office or department for resolution. The final report will be issued within sixty (60) business days after the commencement of formal procedures. Again, the time may be extended by mutual agreement or as is permitted in this policy. Supervisor of Elections will provide copies of the report to the complainant, respondent and appropriate District Boards. The complainant and respondent will be advised of the appeal process at that time.

(e) FINAL DETERMINATION

When charges of a problem/violation are substantiated and probable cause is determined. The appropriate District Board, in consultation with the Supervisor of Elections, will render a determination regarding the proposed disciplinary and/or corrective action. The Supervisor of Elections input will be limited to issues presented in the case and specific questions regarding compliance with federal and territorial mandates. Decisions regarding corrective action shall be exclusively the province of the appropriate District Board. The District Board will be responsible for the implementation of all such disciplinary/corrective action. At a minimum, the action taken should be designed to protect the complainant from future any procedural or statutory violations. Consistent with the Election System's employee confidentiality policies, the complainant may not be fully advised of actions imposed. The District Board, in consultation with the Attorney General, will determine whether further hearing opportunities are required prior to determination of proposed discipline. The territory shall make a final determination with respect to the complaint prior to the expiration of the 90-day period, which begins on the date the complaint is filed, unless the complainant consents to a longer period for making such a determination. If the territory fails to meet the deadline 90-day period, the complaint shall be resolved within 60 days under

alternative dispute resolution procedure. The record and other material from any proceeding conducted under the complaint procedures shall be made available for use under the alternative dispute resolution procedure.

(f) APPEAL PROCESS

If either party (complainant or respondent) is not satisfied with the outcome of the final determination, that person may appeal to the Joint Board of Elections. Any such appeal shall be in writing, stating the basis for the appeal, and shall be filed in the Office of the Supervisor of Elections within ten (10) business days of the date of the finding of no probable cause, or the date of the District Boards determination of proposed sanctions, whichever is appropriate. If there is no appeal within the time limit set forth, the finding of no probable cause shall become final, or the proposed sanctions will be imposed, as the case may be. When an appeal is filed, the Supervisor of Elections and/or the District Board shall forward information regarding the complaint to the Joint Boards of Elections, and the complainant or respondent may submit any further information as desired or requested. The Joint Boards of Elections shall, within ten (10) business days, communicate in writing to the complainant and respondent a decision with a copy to the Supervisor of Elections. The Board may refuse to hear the appeal, thereby affirming the findings of the District Board or Supervisor of Elections or, it may hear the appeal. The complainant and respondent will be notified, in writing, whether or not the Board will hear the appeal. The hearing may be formal or informal, and the time and place of such hearing shall be communicated within a reasonable time to all parties involved. Formal rules of evidence shall not apply. The Board or other member of the Board designated, as chair of the appeal committee shall control the appeal Board, or its designated committee, shall have access to all facts and information it believes relevant to the case. Counsel at the hearing may represent parties involved in the appeal. Upon conclusion of such hearings, the Board or its designated Committee shall render a decision in writing, and a copy will be provided to both complainant and respondent. That decision shall be final.

(g) Further Appeals;

Within thirty (30) days from the date the Board's decision order become final, any party aggrieved thereby may petition the Territorial Court of the Virgin Islands for review of the same. The appeal shall be taken in accordance with the rules of procedure of the Court and shall name the opposing party at the administrative level as the appellee. The Board or a duly designated agent should also be named to facilitate delivery of the administrative record to the Court.

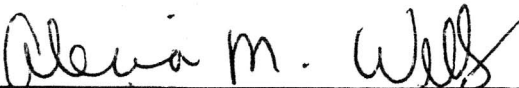
SECTION 47-4

ALTERNATIVE DISPUTE RESOLUTION PROCEDURE

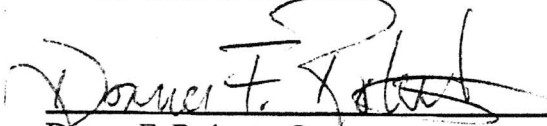
(A) **MEDIATION;**

1. Mediation shall be the alternative dispute resolution procedure It is mandated pursuant to P.L. 107-252 section 402(1)(I). Upon preliminary review of the allegations, the Joint Board of Elections will determine whether the case is appropriate for mediation. Examples of those that may not be appropriate for mediation include complaints that involve discrimination against a group or class, reflects a pattern and practice of discrimination, or criminal violation. (This is not an exhaustive listing). If the complainant's selection of mediation is appropriate, the Supervisor of Election will initiate the mediation process within fifteen (15) business days. The Supervisor of Election may serve as the mediator or assign the case to a mediator. The mediator must be neutral, objective, and agreeable to both parties. The mediator will promptly arrange a meeting of both parties, during which the parties will develop a memorandum of understanding as to the purpose and goals and scheduling of the mediation sessions. The mediator will preserve this documentation. At the conclusion of the successful mediation, the parties will develop and the mediator will preserve an agreement for resolution of the complaint and future interactions between both parties. The written agreement will be signed by both parties and submitted to the Supervisor of Elections. The agreement will take effect immediately according to its own terms.

We hereby approve these rules and regulations as adapted by the Joint Boards of Elections at the regular meeting of May 19, 2004



Alecia M. Wells, Chairman
Joint Boards of Elections



Donna F. Roberts, Secretary
Joint Boards of Elections

DATED: This 19th day of May 2004